THE

IRISH STATE TRIAL.

BY

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'THE Law of Conspiracy leaves so broad a discretion in the hands of the Judges that it is hardly too much to say that plausible reasons might be found for declaring it wrong to combine to do anything which the Judges might consider to be morally wrong or politically or socially dangerous."—*Quoted on June 6, 1873, in the House of Commons, by Sir W. Harcourt, the present Home Secretary, from Roscoe's Criminal Law.*

BENNETT BROTHERS, LONDON AND DUMBARTON.
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In the excitement of the recent heated Parliamentary struggle the facts of the Irish State Trial have not received sufficient attention, nor has any careful examination been made of the alteration which the ruling of the Irish Judges has effected in English Law. Yet the results of that trial profoundly affect our civil rights, both of free speech and of combined action. A decision in Ireland is applicable and binding in England, and the fact of the acquittal of the defendants makes no difference. The law, as laid down by the two Judges, is a precedent that will be used in the future as the occasion arises. It is, therefore, of the utmost importance that some one should explain the effect of the prosecution, and how far the Government has succeeded in its strange and unnatural attack upon English liberty. I propose to state what took place as calmly and impartially as I can. In referring to the Judges, I shall endeavour not to deviate from the line marked out on a former occasion, when, in 1875, similar decisions by English Judges were impugned in prosecutions against workmen for conspiracy—namely, that of saying nothing which could tend to lessen the respect felt for the judicial office and the proper administration of Criminal Justice.

In England and Ireland, when administering the Law of Conspiracy, the Judges have invariably thought themselves entitled to legislate, and to carry out by their decisions the particular moral, political, and social views they happened to hold. While careful to preserve a certain decorous judicial continuity, they have from time to time evolved laws and constructed crimes at variance with the conditions of liberty and of modern industrial life, and which, unduly favouring one side in the social and economical struggles of the time, have seriously compromised the peace and order of the realm. Therefore, in passing a moral judgment on what the Irish Judges have done in this trial, it must be borne in mind that the same course has been constantly adopted by the Judges in the two countries; that it is only more serious on the present occasion because the alteration is larger, the crisis more acute, and the interests involved co-extensive with those of the people of England and Ireland. What I have to say I shall divide into three parts, dealing respectively with the conduct of the Government in the course of their prosecution; what has been actually decided by the Judges, and, therefore, what is the law now applicable in England and Ireland; lastly, the consequences that have already followed, and must follow, upon these decisions, and the course that should be adopted in the future to restore and protect the liberties of which hitherto we have been justly proud.

The trial offers us no example of cruelty or tyranny. While dealing with the evidence, the Judges appear to have been just and fair; and though I maintain that they have perverted and extended

the Criminal Law, I impute nothing to them beyond that which is conveyed in the quotation from Roscoe, cited by Sir W. Harcourt, which I have placed on my title-page. Viewed correctly, this systematic abuse is far more dangerous to the public and to liberty than any exceptional infractions, or even than the cruelties perpetrated by the Judges in the time of the Stuarts, when they were removeable at the King's pleasure. The iniquities perpetrated by Scroggs and Jefferies were not effected by perverting the law. They administered their justice with relentless ferocity and vindictive cruelty; they bullied and insulted witnesses and juries; but, as a rule, they were careful to keep within the law, probably thinking that their safety lay in having administered the laws as they existed, and being able to throw the responsibility of what they did upon the Legislature.

In regard to the conduct of the prosecution a moral judgment has to be pronounced in respect of some things which were distinctly legal. We ought to enter a solemn protest against the use of the old machinery of the criminal information filed by the Attorney-General. The language used by Sir W. Harcourt in reference to the indictment against the gas-stokers may be applied with still greater force on the present occasion. He said "that an indictment was drawn up, taken out of the rusty armoury of the Common Law. They furbished up the old instrument of the ancient Common Law of Conspiracy, which he need not tell any lawyer had long been the scandal of English Jurisprudence." The "information" is, however, worse and more dangerous to liberty than the indictment, because the latter involves the proper preliminary stages of the criminal trial—namely, the investigation before Magistrates, the reduction of the charge and evidence to formal written depositions, the charge by the Judge, and a true bill found by a Grand Jury after evidence upon oath. These stages of the trial are not essential in point of law, but they are enforced as necessary in practice by the Judges, because they are valuable for the administration of justice, both to secure convictions and to protect the innocent. In O'Connell's case, the trial was upon an indictment found by a Grand Jury. Therefore, the Attorney-General on this occasion, by filing his information, departed from precedent in cases of this kind, and trampled upon the ordinary rules of practice, which are a safeguard to liberty. The only excuse he could offer at the trial was the paltry one that it prevented excitement and saved the accused from the indignity of arrest, which last remark was obviously incorrect, because there is no necessity to arrest on an indictment any more than on an information. On the other hand, the Grand Jury might have ignored the bill or some of the counts. But the use of this information must be judged by the nature of the charges made. There were two charges, or two kinds of charges made. Mr Gladstone, Mr Forster, and the Attorney-General, by means of this unfair and tyrannical power, before the session of Parliament began, arrested five of their political opponents in the House of Commons, and charged them with conspiring to carry out their purposes by violence

and inciting to violence. At the trial they were not able to produce any real evidence in support of their accusation. It fell to the ground. Mr Justice Fitzgerald, in his summing up, said "that he acquitted those gentlemen (the five Members of Parliament), one and all, of any design to foster outrage. *He gave them credit for endeavouring to check it.*" Mr Forster may throw the blame upon the Irish Attorney-General; but it is indeed a strange thing if Mr Forster did not make himself acquainted with the purport of the charges to be made in a State prosecution of this nature. We can only hope, if this is the case, that he may be more careful in the administration of the vast despotic powers with which Parliament has entrusted him.

The real point as to the use of the information is that, here in England, as in Ireland, a number of men, even in high position, may be arrested, thrown into prison, and bail refused, without any notice, on charges which are not legally criminal offences, or for which there is no evidence forthcoming! It was precisely to prevent the possibility of similar occurrences that various wise provisions were introduced into Sir James Stephen's Code, that was brought into Parliament by Sir J. Holker. In the information the only counts that were clearly valid in law were those alleging violence. But the conviction of Mr Parnell and his associates was not the true object of the Government: it was to get a judicial decision that the Irish Land League was an unlawful association. It was impossible to do this by any fair application of the Criminal Law.* The counts of the information are a number of concocted crimes new to our law—some, indeed, absolutely unheard of before, such as those that charge a double conspiracy, "that the defendants conspired to incite unknown persons to conspire to induce other unknown persons to break their contracts." Other counts are concoctions from different isolated expressions of Judges, which are treated as judicial decisions, and then rolled together in the most confusing and inextricable way. In many counts of the information the charge is that the purpose of the conspiracy was to "impoverish" landlords. This was borrowed from an old indictment, which tried to make a crime out of a strike of workmen, because the legal economical notion was that the impoverishment of the employer was enough to make the combination on the part of the men criminal. The Attorney-General, in his opening speech, says:—"Now, what is the common design with which they are charged? The immediate object is to injure and impoverish the landlords." But is the combination to impoverish a criminal conspiracy? Is the combination to injure, a criminal offence at law? To both these I answer that they are not. The Attorney-General rolls them together, but each depends on whether there are judicial decisions to support them. The conspiracy to impoverish rests upon one solitary ancient case in which some employers prosecuted their

* Except in those counts alleging violence, force, threats, or intimidation. These are good, because, when freed from the surplusage by which they are enveloped, they do charge a conspiracy to effect a lawful purpose by violence or intimidation, which is of course a criminal offence.

workmen for a strike. It was at that time thought very doubtful law, and depended solely upon the notion that strikes by workmen were illegal, because they were in restraint of trade. Yet this exploded rubbish is made the principal allegation in a State prosecution, and our liberties recklessly attacked by that which all parties, including the present Government, had agreed by their legislation to regard as intolerable nonsense. But the grave part of the matter is that this has been upheld by the Judges, who decided that the Counts in the information were valid in law.

The next question is whether the combination to injure is a criminal offence. The Attorney-General, to establish this, cites a judgment of Lord Chief-Justice Cockburn, which does at first sight seem to tell in favour of his view, viz., Reg *v.* Warburton. The Chief-Justice does say that combination to injure is an indictable offence. But the Attorney-General (in the report before me) makes no mention of the all-important fact that the case was not one of the present kind at all, but one of *fraud*, in which the injury was by fraudulent means; and if the Chief-Justice had been fairly and properly quoted *, the decision has a totally different bearing. Mr R. S. Wright, a thoroughly competent authority, in his valuable work on Conspiracy, in examining all the cases on combination to injure individuals (otherwise than by fraud), says :—"These authorities, on the whole, strongly favour the view that a combination to injure a private person (otherwise than by fraud) is not as a rule criminal, unless criminal means are used." And again he says that "in none of the cases is there any decision which tends to establish this proposition, but at most arguments of counsel and some expressions attributed to the courts." Yet there is not a word of all this to be found either in the Attorney-General's speech or the legal decisions by the judges! Such is the way in which a modern State trial, affecting our dearest liberties, is conducted in Ireland. The Attorney-General has not the slightest doubt or difficulty. He goes on thus :—"Any combination for the purpose of doing injury and hurt to others is itself illegal by the common and ancient law of the land. It is perfectly innocent for me not to go and buy in a particular shop, but it is decidedly illegal for you or me to agree that none of us will go to a particular shop if it is for the purpose of injuring that shopkeeper." Now there is no legal decision to support this proposition, except one which was not alluded to at the trial, and is not reported † in a labour case tried at

* The words of the Chief-Justice are :—"The facts of this case thus fall within the rule that when two *fraudulently* combine, the agreement may be criminal, although if the agreement were carried out no crime would be committed, but a civil wrong only would be inflicted on a third party," which is a totally different statement to that made by the Attorney-General.

† This case was insisted upon by me in my evidence before the Labour Law Commission, as demonstration that the law had been perverted by the Judges. When I read that decision to the Royal Commission, the three Judges expressly refrained from any observation upon it. The following exclamation, however, escaped from the Chief-Justice :—"Did the Judge say that?" which observation was not reported, but of which I kept a note. Being a public investigation n which I was a witness, I am entitled to publish it now.

Manchester. This was generally repudiated by the profession, and was not supported, but by implication repudiated by Lord Chief-Justice Cockburn, Sir Montagu Smith, and Mr Russell Gurney, in the report of the Labour Law Commission. It is obvious, that two persons who said that they would withdraw their custom from a shop that they disapproved of would be criminally responsible. Any two persons setting up an opposition shop, in the street, would be liable to two years' imprisonment. In fact, all competition, if done by more than one person, would be a crime, because competition is the direct intention of injuring to the extent of drawing the tradesman's customers away. If this were law, one-half of the people of this country would be criminals. But the Attorney-General goes further. He says :—"It is quite enough if either the object or the means be hurtful or mischievous to somebody in order to render the proceedings illegal in point of fact." And it is from such a statement of the law, that the Government deduces the criminality of the strike or refusal to pay rent. He goes on :—"If only one person should attempt to do that, it would only be a civil wrong ; but if it be done by two or more persons, it amounts to a conspiracy." And then the Attorney-General proceeds to illustrate his doctrine. His illustrations, however, are singularly unfortunate, they being distinctly criminal in kind, when done by one person, though not criminal offences till done by two. He takes as his example seduction, which is a wicked crime, but one which it is practically impossible to punish unless done by two. This is the kind of reasoning upon which this great State trial was built up. Some years ago Mr Forster said that he could not understand why two men should be punished for doing that which the law allowed one to do. Now, perhaps he has learnt. Without this law he would not have been able to sustain such prosecution and obtain the usual extension of the law of conspiracy, to fit the requirements of the Government.

Thus much of the legal question. But there is a moral one, which must not be forgotten. Is there any one who really believes that the object of Mr Parnell and his friends in their agitation was to impoverish and injure landlords? Can it for a moment be doubted, that even if Mr Parnell and his associates had endeavoured to carry out their objects by really criminal means, they were actuated solely by noble and patriotic motives, to preserve their fellow countrymen from the misery and oppression that is admitted to have existed? It is sufficient to quote Mr Justice Fitzgerald's language on this point, to refute this part of the charge made by the Government in their "information." He says :—"No doubt there was in this country great distress, and I have no doubt that there was in this country amongst the needy and distressed landlords a great deal of what you might characterise as landlord oppression." Oddly enough, the prosecution and the Judges labour to show that the real object of the defendants was something not alleged by the information at all—namely Home Rule, or repeal of the union, not seeing that the more they prove this, by so much they give the

lie to their own allegation of the intent being to impoverish and injure private individuals. To make such an imputation against Mr Parnell in what is admitted by Europe to be a great national and social struggle for freedom, was extremely impolitic, and even reckless.

The next point is an attempt to show by a mere juggle of words that combination to commit a civil wrong is a criminal conspiracy. Here, too, there is no legal decision to justify such a pretence. The nature of the attempt is at once seen, when it is considered that under this ruling any two persons committing a joint trespass is guilty of a criminal conspiracy. No country lads but what are criminals, if this be law. Such a proposition is really preposterous, and what is more to the point, it is not the law.* The object, of course, was to make the combination not to pay rent a criminal offence. They try in every way, and with untiring subtlety, to make it so. The next attempt was to make it a conspiracy for more than one person to combine to refuse to pay rents, on the ground of this being a breach of contract. There are some decisions that, at first sight, might seem to help them. In the case of the workmen, breach of contract was a criminal offence by statute, before the reforms in the Labour Laws of 1875. Therefore, conspiracy to break a contract was conspiracy to commit a crime. The gas stokers were legally convicted on this ground. But apart from this, a joint breach of contract, or combination to break a contract, is not criminal. Are any two tradesmen who deliberately break their contract to be indicted for conspiracy? But there is not a single legal decision in support of the proposition that a combination to break a contract is a conspiracy. All the cases depend on the fact that breach of labour contracts were criminal by the Statute Law. There may be, there are, some expressions of Judges which go somewhat further, but they have all been constantly contested, and not supported. The working classes have always claimed the right to break their contracts as individuals, or, if they choose, together. Lord Chief-Baron Pollock declared that a man has a legal right to break his contract, subject to the civil liability he incurs. Every case depends on its circumstances. Breach of contract may be wrong; but it may be right. It may be morally right not to carry out a contract. Each man is the sole judge for himself. And the labourers claim the right to judge for themselves *en masse*; and by combination and public meeting, to refuse to fulfil their contracts. This the Legislature has fully granted to them in the Labour Laws of 1875. It cannot be said that I am contending for anything unusual when it was granted by the Legislature, and it formed the very basis of that reform. The recommendations of the Royal Commissioners on the subject of joint breach of contract were, indeed, repudiated with something almost amounting to contempt by the House of Commons. The principle that breach of contract by one or several is not criminal was expressly adopted as the

* Mr Wright goes so far as to say "that it could not be seriously proposed to make agreement in doing a civil injury generally criminal." Yet this is what the Government has proposed, and to which the Judges have given their sanction.

foundation of Sir R. Cross's measure, and may be seen by his accepting the consequences of this principle, that if it were necessary in certain exceptional cases that the breach of certain very important public duties should be criminal,* that should be done by special legislation. Accordingly, he did make two special services liable to criminal punishment for certain well-defined breaches of duty—namely, the Gas and Water Services. The same principle, that breach of contract is not criminal, was the basis of Sir W. Harcourt's efforts on this subject, and his admirable speeches on the Conspiracy Law. In a speech that he made, on his Conspiracy Bill coming back with amendments from the House of Lords, he pointed out that "this Bill would, for the first time, recognise in an Act of Parliament an agreement to break a contract to be an indictable offence. To so dangerous and mischievous a proposition he for one would never assent." "The Bill would recognise by statutory authority that to which they could not, and must not, assent--namely, that that was a crime as between master and servant which was treated as a crime in no other class of the community." And the consequence was that the Bill was dropped. This was taken as a thoroughly sound exposition of the law. Indeed, Sir W. Harcourt's speeches on the Law of Conspiracy were very remarkable for their accuracy and complete grasp of the subject. And, moreover, his conclusions were supported by the best authoritative opinion, like that of Mr Wright, who is quoted on that occasion. Sir Henry James, the present English Attorney-General, on 6th June, 1873, in the House of Commons, spoke as follows—"Working men complained that the Law of Conspiracy pressed peculiarly in its uncertainty upon them. In punishing what the Law called Conspiracy, we were punishing what the working men called Combination. They were bound to combine, and their experience was that without combination all attempts to improve their condition were hopeless. The gas-stokers were punished because, admitting their right to combine, they had combined to break a contract, and because, under the Master and Servant Act, that was a criminal offence. *It would not have been criminal on the part of any other subject of the realm*, but it was criminal in them."† Lastly, I cite Mr R. S. Wright, whom I regard as a very high authority. He says, in his book—"Agreements for breaches of contracts of services, in cases to which no Penal Act applies, seem never to have been determined to be criminal." This attempt, on the part of the Government, to make breach of contract criminal in the case of tenant-farmers is, therefore, a gross piece of hypocrisy. Thousands of contracts are broken every day by the upper and middle classes,

* It would be easy to prove this by reference to Mr Cross's speeches while the Labour Laws were passing through the House of Commons.

† On 15th March, 1881, Sir H. James contradicts this. He says not only that a combination to break a contract is a conspiracy, but that any one man advising others to break a contract is guilty of a criminal offence. This makes workmen still liable to the law under which the gas stokers were convicted, and is a direct challenge by the Government to the working classes. When the history of the passing of the Labour Laws is remembered, it is impossible to conceive of a greater breach of faith and honour than has been thus committed by the Government.

and no one ever dreams of this being a criminal offence, whether done by one or two or more persons. Actions against more than one defendant are tried every day for breach of contract, and no one ever heard of such breach being regarded as a conspiracy. In the Bankruptcy Law no such distinction is made, but the contract-breakers are not only not punished, but protected from the civil consequences of the law, whitewashed and allowed by the law to start again. Nay, more, the law allows a majority of creditors, in combination with the debtor, to compel a minority of unwilling creditors to take a composition that is less than they are entitled to by the law. Thus the law itself sanctions and compels the breach of contract, as a relief to the social oppression which would otherwise take place. Yet, notwithstanding, the whole of this history, we have the Attorney-General saying that any attempt to incite persons not to pay rent is a criminal offence; and endeavouring to prove it by reference to the doctrine that a combination to injure is a criminal conspiracy, as I have explained. The common practice among English barristers, which is not thought dishonourable, is to take large fees and not to do the work. I have known large fees with difficulty scraped together by poor people to defend a man for serious crime in the one great peril of his life, and the retained counsel to desert his client, aided and abetted by other barristers! But this is not conspiracy.

Thus far, I have dealt with the objects of the conspiracy, none of which are unlawful—none of which can be relied on to justify the charges of the Government, except those alleging violence, or threats of violence. In law, however, it is a conspiracy either to combine for an unlawful purpose, or to combine to carry out a lawful purpose by unlawful means. The wickedness the lawyers always perpetrate, if they get properly paid for it, is that where they cannot make out either the purpose or the means of the combination to be unlawful, they then roll them together, in the confused and intricate jargon of the law, and then say, solemnly, that though neither the purpose nor the means would, by itself, be criminal, yet, when the one is to be done by means of the other, that is a highly criminal conspiracy. By rolling the means and the purposes up together in a number of different ways, perhaps the whole matter may be made so intricate and involved, that the indictment may, so to speak, hold water. This is what has been done, and we must proceed to examine the "means" alleged. I say nothing of those counts which alleged the conspiracy to use physical force, or to intimidate by threats of violence, and to interfere by force with the process of the law. If people do that they must take the consequences. But, as before remarked, the Judge disposed of all attempts, on the part of the five Members of Parliament, to foster violence and outrage. In four counts of the information no "means" whatever are alleged. The only means relied upon by the prosecution is the social ostracism or Boycotting, except in the 9th Count, which is of a most extraordinary nature, and in which a second conspiracy is used as "the unlawful means" which is to make the first conspiracy

criminal. It is very confusing, and altogether novel. The charge is "that the defendants conspired to incite unknown persons to conspire, by agreeing together, not to pay or bid for any goods taken in execution, to prevent the said goods being sold, &c." The Judges have held that this is the law. No competent criminal lawyer can say that this is not a perversion and extension of the law of the most dangerous description. That "the unlawful means" may be a second agreement is a doctrine wholly unknown to our law.

The prosecution relied chiefly on what was dignified by the name of "social ostracism"—in other words, "sending to Coventry." This has never before been held to be criminal. It is another perversion of the law to make the Land League criminal. No one has ever pretended that an excommunication by Catholic priests is an indictable conspiracy ; but it has been held to be so by Mr Justice Fitzgerald's summing up. If either of the Judges is a Catholic, I wonder what the Pope will think of him. I contend that "social ostracism," "excommunication," "sending to Coventry," is not only lawful, but may be, and very often is, morally right. I am told that the people of Alsace socially ostracise anyone of their countrymen who accepts service under the Prussian rule. It would be morally right if the members of the House of Commons were to "socially ostracise" any one of their body who was known to have bought his seat by payment of a large sum of money expended in improper practices. The prosecution in the present case have raked up every conceivable judicial expression, so as to make some show of legality, to support that which, if it were not so grave and serious a matter, might well be termed the most extraordinary legal and judicial farce ever performed. Those who are acquainted with the history of the Labour Law struggle will be astonished to learn that the case upon which the Government and the Judges were prepared to found their invented doctrine as to the criminality of "social ostracism" was that of Reg *v.* Druitt and others, the tailors' strike in 1867, and Baron Bramwell's ruling about "black looks." This decision was publicly repudiated, hotly disputed, and was the beginning of the Labour Law agitation. In this case the indictment was framed under an Act of Parliament that was repealed ten years ago, and Baron Bramwell's ruling—was invalidated and upset by two subsequent decisions by Lord Justice Lush in the cases of Reg *v.* Sheridan, and Reg *v.* Shepherd, neither of which is mentioned by the Attorney-General or either of the Judges, and which decisions were maintained to be the law by Sir George Jessel, Solicitor-General, and Lord Aberdare, Home Secretary to the Liberal Government, in the House of Commons. In point of fact, however, the tailors' case does not support the attempt to make "social ostracism" criminal, as is clearly shown by Lord Justice Lush, because its essence—the sending to Coventry—consists simply in turning away and refusing to have intercourse or co-operation ; it is purely negative ; whereas, in the tailors' case there were threats and intimidation, and even the far-fetched language about "black looks" implied actual coercion by

fear. But the prosecution, of course, fell back upon their conspiracy counts, and their intent to impoverish and to injure. Well, and wisely, did Sir Henry James in his speech, which I have already quoted, warn the House of Commons against the application of the law of conspiracy in this way. The Act of George IV. as to intimidation was repealed by the Criminal Law Amendment Act of 1871, which, in its turn, was repealed and replaced by the 7th Section of the Conspiracy Act of 1875. Sir H. James, after showing the injustice occasioned by applying the law of conspiracy to the Master and Servant's Act, went on to say:—"In the same way if they took the Criminal Law Amendment Act and applied to it the Law of Conspiracy, they would find that even greater injustice would be done than by its application to the Master and Servant's Act." But the charge in this State Trial was not brought for conspiring to do something contrary to the Statute of 1875, which regulates these matters. If it is a conspiracy against the provisions of a Criminal Statute, then the conspiracy is subordinate to and regulated by the Statute. Here the conspiracy charged is to do something which no Statute and no decision at law have made illegal.

It follows that "social ostracism" which does no more than refuse all intercourse or association, is perfectly legal. The law relative to this subject is the 7th Section of the Conspiracy Act of 1875, which was passed with the express object of regulating picketing, forbidding all intimidation, but allowing what was called "peaceful picketing," namely—watching outside factories and endeavouring by reason and persuasion to induce workmen to join in the strike. The Act was an endeavour on the part of the Legislature, and it seems a very successful endeavour, to hold the balance evenly between the contending parties, and at the same time to maintain peace and order. This Act was made generally applicable to all citizens, and not merely to workmen, and it is clearly applicable to the struggle between the Tenant Farmers and the Irish Landlords whether the relation be regarded, as I regard it, as an instance of labour and capital, workers and employers, or otherwise. Workmen are distinctly entitled, as far as the Criminal Law is concerned, to strike whether they are employed on a contract system, or on what is called the minute system, or by the piece, or by the lump; and to endeavour by their strike to compel the employer to give them higher wages in the future, or to alter his modes of carrying on business so long as they do not infringe the provisions of the 7th Section of this Act, and subject always to any civil proceedings that may be taken. I contend that the Tenant Farmers are entitled to strike against rent, so as to compel a better adjustment of conflicting interests exactly upon the same grounds that the right on the part of other workmen has been advocated and maintained, and recognised by law.

I now come to what the Irish Judges decided. By the time the trial reached the summing up, the charges had been somewhat narrowed. The vague count for sedition had been withdrawn. It had been admitted by the Judges that the Five Members of Parliament had

not incited, or intended to incite to outrage, or to carry out their purposes by violence. Further, the Judge had recommended the Jury not to take any heed of the ravings of Nally and Gordon. The question of how far they were answerable for other wild speeches laid in evidence against them, to which they were not parties, was not pressed at all hardly by the Judges against the defendants. With regard to the admission of evidence most unusual latitude was allowed, as for instance in the introduction of Miss Parnell's poem as evidence upon such a trial. No one can impartially read through the details of this trial without one of two conclusions. Either the licence allowed was exceptional, and the trial unfair; or there is the utmost danger to liberty in the future if evidence, on political trials, is to be admitted in this way. At the same time this extraordinary mass of evidence was not used harshly or unjustly. The error on the part of the Judges, I believe, lay in the latitude allowed, and this latitude followed upon the very vague character of the whole information, in which no single act was alleged to be done by anybody to anybody, which, if not absolutely unheard of, is at least very unusual. Of the 19th Count, for Sedition, Mr Justice Fitzgerald said, that it "was so general that it was impossible to say what evidence should or should not be admitted under it." The same remark might have been made on all the Counts. The information must have been framed by the Attorney-General, with the object of using the wicked and detestable, but legal doctrine of constructive criminality against the defendants.

Now, what have the Judges decided? In the first place they have held all the Counts in the information, except the last, to be valid in law, and therefore they have created a number of new and most formidable laws, destructive of the liberties of the people of England. Mr Justice Fitzgerald said, "I have again to repeat that if the evidence satisfies you that the allegations of facts contained in the several counts of the information, or any of them, are true, then I inform you that the defendants have been guilty of a breach of the law, and you should find them guilty accordingly." These Counts, thus upheld, are just as much penal laws as if they had been sections in a criminal statute. They are, however, so confused and intricate, that Mr Justice Fitzgerald has in fact reduced his decision to four heads, upon which he holds the Counts to be valid. In my opinion, they are all bad in law, except those alleging a conspiracy to use force and intimidation. The Judges decided. (I quote the actual words said.)

1.—"To incite tenant-farmers not to pay their rent is an offence against our Common Law."

This can only be on the ground of joint breach of contract being criminal, which I have shown to be a perversion of the law, whether it is directly stated as a criminal breach of contract, or as a combination to do a civil wrong or to injure.

2.—"To incite persons to prevent persons from taking or keeping farms from which others have been evicted for non-payment of rent, is an offence against Common Law."

Vaguer language creating crime was never used. Unless there is inciting to use physical force, the law is not as stated.